

**REMARKS**

Reconsideration of the application in light of the following remarks is respectfully requested.

**Status of the Claims**

Claims 1-3 have been amended and no new matter is added.

Claims 1-3 have been amended for clarity and not for reasons of patentability.

Claims 1-3 are pending.

**Rejection Under 35 U.S.C. § 103**

Claims 1 stands rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,511,243 to Miranda in view of U.S. Patent No. 6,179,505 to Oder, III et al. (“Oder”). The Examiner contends that Miranda discloses most of the claimed features in claim 1 with the exception of a concave cradle in which the sphere rests, which the Examiner asserts is disclosed by Oder. It is the Examiner’s position that it would have been obvious for a person of ordinary skill in the art to combine the two references to render obvious the claimed features of claim 1.

Applicant respectfully traverses the rejection and submits that neither Miranda nor Oder disclose or suggest an end wall of a cap which internally defines a concave cradle in the form of a spherical calotte, inside which a portion of a sphere is situated.

Oder may disclose a cap comprising an end wall, but does not disclose a cradle “inside which a corresponding portion of the sphere is seated when the cap is fitted to the tubular body.” (Claim 1). Oder specifically discloses that while the cap is in rest position, “said cap nowhere touches said [sphere]. Specifically, a gap (24) divides the outer surface of [the sphere] from the inner surface of said cap/[end wall].” (Oder, col. 8, lls. 15-18). Oder specifically teaches that the

only time the cap comes into contact with the sphere is when the cap is engaged or disengaged from the container which causes the end wall to depress the sphere. The act of depressing the sphere creates a free passage between the sphere and the dispensing opening of the container thus disengaging the leak-tight engagement between the sphere and the dispensing opening, allowing the ball to rotate and spread the container contents on outer surfaces. (Oder, col. 7, lls. 39-42). If the sphere disclosed by Oder constantly rested on the end wall disclosed by Miranda, the leak-tight engagement would be disengaged. The combination of Miranda and Oder destroys the purpose of Oder's invention, to provide a leak-tight container.

Thus, combining Miranda and Oder does not render obvious the present invention. Miranda and Oder do not teach or suggest the features disclosed in independent claim 1 and therefore claim 1 should be allowed.

Claims 1-3, stand rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 2,910,712 to Schaich et al. ("Schaich) in view of Miranda. The Examiner contends that Schaich discloses most of the claimed features of claims 1-3, including a tubular cap having an end wall which defines a concave cradle in which the sphere rests. The Examiner contends that Schaich only excludes the notion that the cap may act as a seating surface, which the Examiner contends is disclosed by Miranda.

Applicant respectfully traverses this rejection and submits that although Schaich may disclose a concave cradle, he specifically teaches away from using the cap as a seating surface. Schaich expressly notes that gaskets may be undesirable when viscid or sticky liquids are held within the container. (Schaich , col. 3, lls. 48-51). Schaich explicitly lists "deodorants" as an example of such viscid or sticky liquids. (Col. 3, ll. 62). The Examiner references Figure 4 as an

example of a structure with a concave cradle, which purposefully omits a gasket. However, in reference to Figure 4, Schaich deliberately discloses that

“the minority portion 11b of the [sphere] and the cavity 13c are spaced apart to define an arcuate space between the [sphere] 11 and the closure 13. This arcuate space or moistening chamber is particularly advantageous when viscid or sticky liquids..., such as ... deodorants, and other similar preparation are to be applied.”

(Schaich, col. 3, lls. 56-63). Thus, because the sphere and the cavity are spaced apart to provide a curved space between the sphere and the cap, the cap cannot serve as a seating surface.

Therefore, the combination of Schaich and Miranda do not teach or suggest the features of independent claim 1.

Claim 2 and 3 depend from claim 1 and as such are patentable at least for the reasons stated above regarding claim 1.

## CONCLUSION

Each and every point raised in the Office Action dated January 25, 2005 has been addressed on the basis of the above remarks. In view of the foregoing it is believed that claims 1-3 are in condition for allowance and it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining which the Examiner believes could be resolved through a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

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Respectfully submitted,

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